

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 28

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	
v.)	COMPLAINT
)	
ERTLE K. CHAVIS, Attorney,)	
Defendant)	

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereinafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the Discipline and Disability Rules of the North Carolina State Bar promulgated thereunder.

2. Defendant, Ertle K. Chavis (hereinafter "Chavis" or "Defendant"), was admitted to the North Carolina State Bar on August 24, 1975 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, the State Bar alleges:

3. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Lumberton, Robeson County, North Carolina.

First Claim for Relief

4. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 3 above as if set out in full herein.

5. Between January 1, 2009 and June 30, 2012 (hereafter "the audit period") Defendant maintained a client trust account with BB&T Bank, account number ending in the digits 8807 (hereinafter the "trust account").

6. Defendant used the trust account as a general trust account in which Defendant deposited and disbursed client funds.

7. Defendant collected payments from various third parties on behalf of his client D.M.

8. Defendant did not deposit all of the funds received on behalf of D.M. into his trust account.

9. Although Defendant was due fees from some of the payments, the payments did not solely consist of his fees. Defendant was not entitled to keep all of the undeposited funds he received on behalf of D.M.

10. Defendant used for his own purposes the undeposited payments he received on behalf of D.M. to which he was not entitled.

11. Defendant misappropriated entrusted funds belonging to D.M.

12. Additionally, despite having deposited into the trust account only \$51,464.08 on behalf of D.M., Defendant disbursed \$77,724.88 from the trust account on behalf of D.M., a difference of \$26,260.80.

13. Defendant occasionally deposited significant amounts of his personal funds into the trust account. He appeared to do so for personal reasons unrelated to proper maintenance of a trust account.

14. Defendant's personal funds deposited into the trust account were insufficient to cover the \$26,260.80 overdisbursement of funds on behalf of D.M.

15. Defendant used entrusted funds held in a fiduciary capacity for other clients for some or all of the \$26,260.80 overdisbursement of funds on behalf of D.M.

16. Defendant misappropriated entrusted client funds from the trust account for the excess disbursements he made on behalf of D.M.

17. Defendant was required to hold at least \$44,285.92 in his trust account on behalf of client S.G. from at least January 1, 2009 to May 19, 2009.

18. On multiple occasions between January 1, 2009 and May 19, 2009, the balance of Defendant's trust account fell below \$44,285.92.

19. Defendant used entrusted funds held in a fiduciary capacity for S.G. for the benefit of himself and/or others.

20. Defendant misappropriated client funds from the trust account he received on behalf of S.G.

21. On May 19, 2009, check number 12028 payable to S.G. in the amount of \$44,285.92 cleared the bank.

22. Defendant used entrusted funds held in a fiduciary capacity for other clients for some or all of the \$44,285.92 disbursement to S.G.

23. Defendant misappropriated entrusted client funds from the trust account for the \$44,285.92 expenditure to S.G.

24. During the audit period Defendant disbursed from the trust account more funds on behalf of the following clients than he held for each client, in the following amounts:

<u>Client</u>	<u>Amount</u>
Branch	180.00
Britt	400.00
W. Cox	39.00
A. Cross	249.99
D & D	125.00
Flowers	14.88
D. Hunt	12.68
R. Hunt	100.00
R. Hunt	131.00
Johnson	495.00
N. Jones	30.00
Lee	125.00
D. Locklear	628.00
T. Locklear	48.25
W. Locklear	200.00
Lowery	299.90
R. Morris	3.00
P&R	17.00
Poolet	2.00
Prevatte	1.60
Revels	30.00
Stone	50.00
Thompson	28.00
Townsend	300.00
Vendetti	5.29
Willoughby	<u>10.00</u>
Total	\$3,525.59

25. Defendant used entrusted funds held in a fiduciary capacity for other clients for some or all of these disbursements.

26. Defendant misappropriated entrusted client funds in the amount of \$3,525.59 from the trust account.

27. On January 20, 2012 check number 13304 in the amount of \$64.00 cleared the bank. Check 13304 was made payable to Sampson County Register of Deeds and was for the benefit of Defendant's client Mr. D.

28. At the time check number 13304 cleared the bank on January 20, 2012, no funds were on deposit in the trust account for the benefit of Mr. D.

29. Defendant did not deposit any funds for Mr. D. into his trust account until February 22, 2012.

30. Defendant used entrusted funds held in a fiduciary capacity for other clients to cover check no. 13304.

31. Defendant misappropriated entrusted client funds in the amount of \$64.00 from the trust account.

32. Defendant conducted a real estate closing for his client J. F. in May 2010.

33. Subsequent to J.F.'s closing, Defendant erroneously wrote and mailed check number 12580 for \$595.00 to the wrong payee. Check number 12580 cleared the bank on May 21, 2010.

34. When Defendant realized he had sent the \$595.00 payment to the wrong payee, he wrote and mailed check number 12698 for \$595.00 to the correct payee, New Century Bank. Check number 12698 cleared the bank on August 11, 2010.

35. At the time check number 12698 payable to New Century Bank cleared the bank on August 11, 2010, Defendant held no funds on behalf of J. F. in his trust account.

36. Defendant used entrusted funds held in a fiduciary capacity for other clients to cover check number 12698.

37. As of June 30, 2012 Defendant should have held in the trust account the following entrusted funds for the following clients:

<u>Client</u>	<u>Amount</u>
Britt	11.47
J. Campbell	17.00
J. Campbell	16.70
R. Collins	105.92
Frierson	938.45
R. Herring	54.43
B. Hunt	227.80
Jacobs	1533.32

Johnson/Ramsey	150.00
P. Jones	87.51
J. Lee	1000.00
T. Lee	1000.00
N. Locklear	7.00
Mansfield	548.00
Melvin	30.00
P&R	10.76
Powell	14.28
T. Ramsey	16.00
H. Revels	552.92
J. Staten	60.00
W. Wardlaw	1355.34
R. Wilkins	<u>25.20</u>
Total	7,762.10

38. As of June 30, 2012, the balance of Defendant's trust account was \$2,874.97. Defendant has insufficient funds in the trust account to distribute approximately \$7,762.10 to the clients listed in the preceding paragraph.

39. Defendant failed to reconcile the individual client ledger balances for the trust account with the general ledger and adjusted bank statement balances for the trust account at least quarterly between January 1, 2009 and June 30, 2012.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. By failing to deposit into the trust account payments that he received on behalf of his client D.M. and instead using the funds for his own purposes, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to promptly deposit all trust funds received in a general trust account in violation of Rule 1.15-2(b), benefitted from entrusted funds in violation of Rule 1.15-2(j), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

b. By disbursing \$26,260.80 more for D.M. than he held for D.M. in his trust account, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

c. By depositing his personal funds into the trust account, Defendant deposited funds belonging to the lawyer in the trust account in violation of Rule 1.15-2(f);

d. By failing to maintain S.G.'s funds in his trust account and by disbursing \$44,285.92 on behalf of S.G. when he did not hold \$44,285.92 in trust for S.G., Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

e. By disbursing from the trust account a total of \$3,525.59 more for various clients than he held in the account on behalf of those clients, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

f. By disbursing \$64.00 for the benefit of Mr. D. when he held no funds for Mr. D. in the trust account, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

g. By disbursing \$595.00 for the benefit of J. F. when he held no funds for J. F. in the trust account, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

h. By failing to maintain a total of \$7,762.10 in the trust account for the benefit of his clients who should have had those funds in the account, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and

i. By failing to total and reconcile the individual client balances with the current general ledger balance and adjusted bank balance at least quarterly during the audit

period, Defendant failed to perform the requisite quarterly reconciliations of his general trust account in violation of Rule 1.15-3(d).

Second Claim for Relief

40. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 3 above as if set out in full herein.

41. Defendant often represented a mobile home dealer regarding transactions in which the dealer was involved in the sale of mobile homes.

42. To facilitate the sale of a mobile home to its customer T.C., the dealer helped T.C. find a buyer for T.C.'s real property in another county. The dealer arranged for T.C. to sell T.C.'s property to J.B.

43. T.C. and J.B. agreed that T.C. would sell the property to J.B. for \$110,000.00. J.B. would pay T.C. \$10,000.00 in cash and make payments on T.C.'s existing mortgage without informing the mortgagee of the sale.

44. The dealer directed Defendant to prepare documents for the sale of T.C.'s real property to J.B.

45. On or about September 30, 2009, T.C. and J.B. came to Defendant's office and signed the documents Defendant prepared. One document was a warranty deed prepared on behalf of T.C. conveying the real property to J.B.'s corporate entity. Another document was a promissory note prepared on behalf of J.B. in which J.B.'s entity promised to pay \$99,865.42 to T.C. in monthly installments over 30 years. A third document was a deed of trust pledging the property as security for the indebtedness owed by J.B. to T.C.

46. The warranty deed that Defendant prepared did not note that the property was being conveyed subject to the lien of the existing mortgage. Rather, it stated that the property was being conveyed free and clear of all encumbrances.

47. The promissory note that Defendant prepared stated that the note was secured by a deed of trust that was a first lien against the property described in the deed of trust, when in fact, the existing mortgage was the first lien against the property.

48. T.C. paid Defendant \$150.00 for preparing the warranty deed and J.B. paid Defendant \$200.00 for preparing the promissory note and deed of trust.

49. Defendant collected no other funds from the parties other than his fees. J.B. paid \$10,000.00 by certified check directly to T.C.

50. After T.C. and J.B. signed the documents, J.B. took the original warranty deed and deed of trust purportedly to record them in the other county.

51. Defendant failed to fully inform T.C. and J.B. about his relationship with the mobile home dealer, that they might benefit from separate lawyers to represent them because their interests may not be fully aligned, that his representation of them was limited to preparation of the documents and that he was not advising them of their liabilities, responsibilities and options regarding the transaction other than to describe the possible acceleration of the indebtedness under T.C.'s existing mortgage.

52. Defendant failed to fully inform T.C. and J.B. that because of his existing relationship with the mobile home dealer and the dealer's interest in facilitating the sale of this property so that T.C. could purchase a mobile home from the dealer, Defendant's loyalty to the dealer might conflict with the interests of T.C. and/or J.B. in this transaction.

53. Approximately one month after the parties signed the documents in Defendant's office, the mobile home dealer directed Defendant to prepare a closing statement regarding the transaction. Defendant prepared a HUD-1 form, signed it, and provided it to the mobile home dealer.

54. The HUD-1 form Defendant prepared did not accurately depict the transaction. For example, the form falsely listed the settlement date as September 1, 2009 instead of September 30, falsely listed Defendant as the settlement agent when Defendant did not deposit and/or disburse the settlement funds, and falsely showed T.C. as taking a \$100,000.00 deed of trust when the actual promissory note and deed of trust was for \$99,865.42.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. By preparing the warranty deed stating that it conveyed T.C.'s property free and clear of all encumbrances and preparing the promissory note stating that it was secured by a deed of trust in first lien position when he knew that T.C.'s existing mortgage was to remain in place, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

b. By placing the interests of the mobile home dealer and his relationship with the dealer above the interests of T.C. and J.B., Defendant engaged in conduct constituting a concurrent conflict of interest in violation of Rule 1.7(a);

c. By failing to fully inform T.C. and J.B. that Defendant's interests in a continuing relationship with the dealer might conflict with their interests, that his representation was limited to preparation of the documents, and that their individual interests might not fully align with the interests of the other, Defendant did not explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);

d. By allowing the mobile home dealer to direct the manner in which Defendant represented T.C. and J.B., Defendant permitted a person who recommends, engages, or pays him to direct or regulate Defendant's professional judgment in rendering legal services in violation of Rule 5.4(c); and

d. By preparing a HUD-1 that did not accurately depict the transaction, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

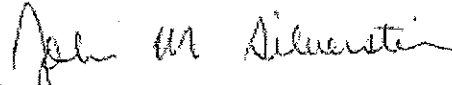
WHEREFORE, the State Bar prays that

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. §84-28 (c) and 27 N.C.A.C. 1B §.0114 as the evidence on hearing may warrant,

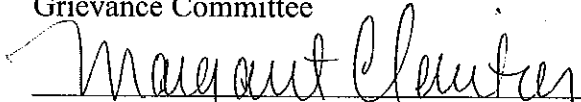
2. Defendant be taxed with costs and administrative fees in connection with this proceeding, and

3. For such other and further relief as is appropriate.

This the 27th day of August, 2014.



John M. Silverstein, Chair
Grievance Committee



Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff

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